

**H2ICE VEHICLE EVALUATION PARTICIPATION AGREEMENT**

This H2ICE (Hydrogen Internal Combustion Engine, also known as a hydrogen engine) Vehicle Evaluation Participation Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between FORD MOTOR COMPANY ("Ford"), having a principal place of business at One American Road, Dearborn, Michigan 48126, and the CITY OF LAS VEGAS ("Recipient"), having a principal place of business at 400 Stewart Ave., Las Vegas, Nevada 89101.

**RECITALS**

A. Ford is willing to provide to Recipient two (2) experimental hydrogen engine vehicles (collectively, the "Vehicles" or, in the singular, "Vehicle"), which will be based on the Ford E450 platform equipped with a hydrogen engine powertrain and any other equipment deemed appropriate by Ford (the "hydrogen system"), for the purpose of aiding both Ford and Recipient to demonstrate and evaluate the performance characteristics of such Vehicles.

B. Recipient wishes to gain experience related to the use of H2ICE powered vehicles and is therefore desirous of obtaining access to, and use of, the Vehicles from Ford, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements herein contained, the parties hereto agree as follows:

1. **Provision of Vehicles.**

(a) Ford hereby agrees to provide two (2) Vehicles to Recipient, to be held and used by Recipient in accordance with this Agreement. The Vehicles are to be identified by Ford, and specified by vehicle identification number, reasonably prior to delivery of such Vehicles to Recipient. The foregoing identification shall be recorded in Exhibit 1, attached hereto and incorporated herein by reference, which exhibit may be updated in writing from time to time by agreement of the parties.

(b) In the event additional Vehicles become available at Ford, at the sole discretion of Ford, the parties may, but shall not be obligated to, negotiate an amendment to this Agreement increasing the number of Vehicles provided by Ford to the Recipient.

## **2. Vehicle Evaluation Term; Participation Fee.**

(a) The evaluation term for each Vehicle under this Agreement is twenty-four (24) months, commencing with the date of delivery of each Vehicle to Recipient, except as may be otherwise extended or terminated in writing by a Party(ies) in accordance with this Agreement.

(b) Ford, at its sole discretion, may terminate the evaluation term of any individual Vehicle or group of Vehicles, effective immediately for (i) safety or technical/functionality reasons, and (ii) in the event of any voluntary or involuntary assignment, attachment, lien or levy is made of, or attached to, a Vehicle(s).

(c) If Ford terminates the evaluation of any individual Vehicle, the evaluation of the remaining Vehicles shall continue in effect under the terms of this Agreement. Additionally, Ford shall have the right to terminate the entire Agreement, which would terminate the evaluation of all of the Vehicles, subject to and in accordance with the provisions of Paragraph 14.

(d) Recipient agrees to pay to Ford a participation fee of \$250,000 (the "Participation Fee") for each Vehicle, as well as other costs as specifically identified in this Agreement. The Participation Fee shall be paid as follows:

(i) \$125,000 per Vehicle upon execution of this Agreement (the "Advance Payment") but no later than March 31, 2007; and

(ii) \$98,000 per vehicle (the Participation Fee for each Vehicle, less the applicable portion of the Advance Payment already made by Recipient plus \$27,000 per vehicle), upon delivery of each such Vehicle.

(iii) \$27,000 per vehicle 12 months after delivery of each vehicle.

(iv) Ford shall invoice the Recipient the above amounts to the following addresses:

Original To: City of Las Vegas  
Accounts Payable  
400 Stewart Ave.  
Las Vegas, NV 89109

Copy To: Dan Hyde  
Fleet & Transportation Manager  
2950 Ronemus Dr.  
Las Vegas, NV 89128

(e) All payments under Subparagraph 2(d) and other payments due hereunder, shall be made payable to Ford and mailed to Ford at the following address, unless otherwise directed by Ford in writing:

Ford Motor Company  
Attn: Melissa Hendra  
Manager, Government Business Administration Suite 600  
330 Town Center Drive  
Dearborn, MI 48126 U.S.A.

(f) All payments and other currency amounts under this Agreement shall be in U.S. funds.

(g) Recipient acknowledges the experimental nature of the Vehicles and, except as otherwise specifically provided in this Agreement, shall not claim any reimbursements or other offsets against any fees, costs or other expenses identified as the responsibility of the Recipient under this Agreement.

**3. Delivery and Return of Vehicles.**

(a) Ford shall be responsible for delivering the Vehicles to Recipient at a location and time to be mutually agreed by the parties. Ford shall not be responsible for any delay in delivery of the Vehicles.

(b) Immediately upon termination or expiration of either the applicable term of the Vehicle evaluation or this Agreement, whichever is earlier, the Recipient shall return each Vehicle to the nearest service center designated by Ford or any other place as the parties may agree in writing.

(c) Notwithstanding Subparagraph 3(a), in the event that Ford does not deliver all of the Vehicles to Recipient by June 30, 2007, Recipient shall be permitted to terminate this Agreement in respect of any undelivered Vehicles, and Ford shall refund to Recipient an amount calculated in accordance with Subsection 14(c).

**4. Title to Vehicles.**

The Vehicles shall at all times hereunder remain the exclusive property of Ford, and shall be marked "PROPERTY OF FORD MOTOR COMPANY". The registrations of the Vehicles shall list Ford as the owner.

## **5. Location and Use of Vehicles.**

(a) Recipient shall use and operate the Vehicles in accordance with, and shall use its best efforts to ensure compliance with all applicable federal, local or provincial laws, rules, regulations or ordinances, including those pertaining to the use of hydrogen in vehicles and to the age and licensing of drivers. Under no circumstances shall Recipient disconnect any odometer or other mileage recording device nor shall Vehicles be used or operated (i) in a manner causing depreciation above the normal depreciation associated with general use, (ii) for any illegal purpose or by a person under the influence of alcohol or drugs, (iii) in any manner or for any purpose that would cause any insurance specified in this Agreement to be suspended, canceled, held inapplicable, or increased in cost, or (iv) outside the metropolitan area of Las Vegas without Ford's express written permission. Recipient shall ensure that drivers receive the appropriate driver training and Recipient shall use its best efforts to ensure that the Vehicles are operated at all times in a safe, careful and lawful manner, and by legally qualified drivers. Under no circumstances shall any such driver be presumed to be the agent or employee of Ford, nor shall any of them be deemed to be under Ford's exclusive direction and control, except when a Vehicle is under Ford's direction and control.

(b) Recipient shall utilize the Vehicles in accordance with a usage plan. A sample plan is attached hereto as Exhibit 2 and incorporated herein by reference, to be developed by Recipient and approved in writing by Ford, in the metropolitan area of Las Vegas, for the purpose of assisting Ford in evaluating the performance characteristics of such Vehicles. If Recipient fails to develop such a plan or the parties fail to agree on a usage plan at least thirty (30) days prior to Vehicle delivery, Ford shall provide to Recipient a reasonable usage plan for the Vehicles and Recipient agrees to comply with such plan. The placement of the Vehicles will be determined jointly by Ford and Recipient, but Ford will be the final authority on where the Vehicles are placed. The Vehicles shall at all times be properly used and maintained by Recipient.

(c) Recipient shall ensure its employees and agents only utilize fueling stations that comply with all applicable standards for hydrogen fuel. Recipient will identify the fueling stations it proposes to utilize and obtain Ford's prior written approval before fueling the Vehicles at such station(s).

(d) Recipient, after consultation with and subject to the prior written approval of Ford at least five (5) days prior to this specific use, may display and operate the Vehicles outside of the Las Vegas metropolitan area for the purposes of generating publicity for the Vehicles or for enhancing the public relations or government relations of the parties. Recipient agrees that all promotional activities or contact with the news media in connection with these Vehicles must be coordinated with and have the prior written approval of Ford, and that the Vehicle shall not be utilized for any partisan political purpose whatsoever. Recipient shall obtain prior written approval for any logos placed on the vehicle. Recipient shall ensure that no Vehicle

leaves the United States prior to termination of this Agreement or any specific Vehicle evaluation term.

(e) The Vehicles shall not be removed from the approved location referred to in Subparagraphs 5(a), (b) and (d), without Ford's prior written approval, for any reason other than (i) return to the original location referred to in Paragraph 3, or (ii) return of the Vehicles to Ford pursuant to this Agreement. Upon request by Ford, the Vehicles shall be delivered by Recipient as soon as reasonably possible to any location specified by Ford. In addition, Ford shall have the right to enter into Recipient's premises, upon reasonable prior notice and during normal business hours, to inspect the Vehicles and Recipient's records with respect thereto.

#### **6. Taxes, Fees and Other Permits.**

(a) Except as otherwise provided in Subparagraph 6(b), Recipient shall pay all taxes and governmental charges imposed in connection with the use and operation of the Vehicles by Recipient, including (i) any permits, special permits, licenses or taxes required by the business of Recipient, (ii) emissions tests and all sales, use, excise, personal property, provincial and mileage taxes, (iii) vehicle registration and inspection fees, and (iv) any other applicable taxes, import duties, securities or associated fees (and all increases therein) currently in force or which become payable during the term of this Evaluation Agreement with respect to the Vehicles or the possession or use thereof.

(b) Ford shall be responsible for obtaining the necessary Vehicle title and making suitable proof thereof available to Recipient so that Recipient can obtain the necessary license and insurance. Recipient shall assume responsibility for ensuring that the Vehicles have been properly registered, including any required inspections or testing, in accordance with the laws of the jurisdiction in which the Vehicles will be primarily used. Recipient shall be responsible for informing Ford in advance of building the Vehicle(s) of any local requirements that might require specific design actions on the part of Ford.

#### **7. Insurance and Indemnity.**

(a) At its sole cost and expense, Recipient shall maintain continuously throughout the term of this Agreement valid and collectible insurance from such companies as are acceptable to Ford and listed in the most current "Best's Insurance Guide" as possessing a minimum policy holders rating of "A-" (Excellent) and a financial category no lower than "VI" (\$25,000,000 to \$50,000,000 of adjusted policy holders surplus). The following insurance shall cover Recipient's activities under this Agreement whether such activities be by itself or by any person to whom Recipient provides any Vehicle or by anyone directly or indirectly employed by

any of them, or by anyone for whose acts any of them may be liable and will also meet the requirements of any so-called "no-fault" law now in effect or which hereafter may be enacted:

(i) Workers' Compensation insurance with statutory limits or a State certificate of self-insurance and Employer's Liability coverage with limits of not less than \$10,000,000 per occurrence.

(ii) Occurrence type commercial general liability insurance, including but not limited to blanket contractual liability coverage, for bodily injury including death, personal injury, and property damage with limits of not less than \$10,000,000 combined single limit per occurrence.

(iii) Automobile liability insurance covering all owned, hired and non-owned vehicles with limits of not less than \$10,000,000 combined single limit per occurrence.

(iv) Collision, comprehensive, and theft insurance in the amount of \$150,000 per Vehicle for repairs required under Section 8 of this Agreement.

(b) With the exception of Workers' Compensation, each insurance policy listed above, and any excess or umbrella policy carried by Recipient with additional limits than those specified above, must name Ford as an additional insured under the policy(s). All insurance policies of Recipient shall be endorsed to state that the policy will be primary, and will not be excess to or contributory with, any self-insurance or insurance policies carried by Ford. The insurance policy shall provide that the policy may not be canceled or materially altered without 30 days prior written notice to Ford. At or before delivery of any Vehicle, Recipient shall furnish to Ford an acceptable certificate of insurance evidencing the coverage required herein. The furnishing of acceptable evidence of required coverage shall not relieve Recipient from any liability or obligation for which it is otherwise responsible to Ford. Ford shall be under no duty to examine any certificate provided by Recipient or to advise Recipient that its insurance coverage does not comply with the requirements set forth herein.

(c) Notwithstanding the above, Recipient shall have the right to satisfy its insurance obligations under this Agreement by means of self-insurance (Attachment A) to the extent of all or part of the insurance required hereunder but only so long as (i) such self-insurance is permitted under all laws applicable to Recipient at the time in question, and (ii) Recipient maintains a Standard & Poor's rating on its senior debt of "A-" or better ("Credit Rating"). If Recipient at any time does not satisfy the Credit Rating, it shall notify Ford of the same and supply Ford with proof of insurance. "Self-insure" shall mean that Recipient is itself acting as though it were the third-party insurer providing the insurance required under the provisions of this Agreement, and Recipient shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all

purposes under this Agreement. To the extent Recipient chooses to provide any insurance required by this Agreement by "self-insurance," then Recipient shall have all of the obligations and liabilities of an insurer, and the protection afforded Ford shall be the same as if provided by a third-party insurer under the coverage required under this Agreement. Without limiting the generality of the foregoing, all amounts which Recipient pays or is required to pay and all losses or damages resulting from risks for which Recipient insures or has elected to self-insure shall be subject to the waiver of subrogation provisions of this Agreement, and shall not limit Recipient's indemnification obligations pursuant to this Agreement. In the event that Recipient elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from a third-party insurer, Recipient shall undertake the defense of any such claim, including a defense of Ford, at Recipient's sole cost and expense, and use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Recipient to self-insure. Any such self-insurance shall be required to provide "first dollar" coverage.

(d) Recipient shall indemnify and defend Ford and its affiliated companies, parent and subsidiaries and their respective officers, directors and employees, agents and assigns ("Ford Indemnitees") from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges, subrogations, and expenses (collectively "Damages") including fees and expenses of legal counsel and expert witnesses, which may be imposed upon or incurred by or asserted against the Ford Indemnitees, or any of them, by reason of actual or alleged (i) injury or death to persons (including without limitation, employees of one or more of the Ford Indemnitees or of Recipient and employees of its contractors, subcontractors, vendors, or agents), (ii) damage to the property of any person or legal entity (including without limitation, any Vehicle or the property of one or more of the Ford Indemnitees and the property of its contractors, subcontractors, vendors, agents or employees) as a result of or arising out of any act or omission of Recipient or its contractors, subcontractors, any party to whom it has made the Vehicle available, vendors, agents and/or employees in connection with or in any way relating to this Agreement. However, the foregoing agreement to indemnify and hold the Ford Indemnitees harmless shall not be applicable to the extent that such Damages are caused by the willful misconduct or sole negligence of the Ford Indemnitees. Nothing in this section shall affect or diminish the limitations of liability secured to Recipient by NRS 41.035, and the Recipient intends and shall assert such protections against any applicable claim of liability.

(e) Ford shall indemnify and defend Recipient and its employees and agents ("Recipient Indemnitees") from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges, subrogations, and expenses (collectively "Damages") including fees and expenses of legal counsel and expert witnesses, which may be imposed upon or incurred by or asserted against the Recipient Indemnitees, or any of them, by reason of actual or alleged (i) injury or death to persons (including without limitation, employees of one or more of the Recipient Indemnitees or of Ford and employees of its contractors, subcontractors, vendors, or agents), (ii) damage to the property of any person or legal entity (including without limitation, any Vehicle or the property of one or more of the Recipient Indemnitees and the

property of its contractors, subcontractors, vendors, agents or employees) as a result of or arising out of any act or omission of Ford or its contractors, subcontractors, vendors, agents and/or employees in connection with or in any way relating to this Agreement. However, the foregoing agreement to indemnify and hold the Recipient Indemnitees harmless shall not be applicable to the extent that such Damages are caused by the willful misconduct or sole negligence of the Recipient.

## **8. Maintenance and Repairs.**

(a) Recipient shall inspect the Vehicles upon delivery and by acceptance thereof is deemed to find the Vehicles in good working order and condition. Recipient shall comply in every respect with the provisions of Paragraph 5, and with the manufacturer's vehicle Owners Guide accompanying each of the Vehicles, and with any special instructions supplied in writing at the time of delivery of the Vehicles or thereafter. This includes no modifications to or addition of any accessories/equipment to the vehicle without the prior written approval of Ford. Recipient or its designee, shall maintain the Vehicles in good working order and condition, properly serviced and maintained, as defined by the applicable Ford standard limited warranty. At its sole cost, Recipient shall:

(i) provide secure space to serve as a home base and garage facility for the Vehicles, which facility will be upgraded to meet all requirements under any applicable laws or as deemed necessary to house and repair hydrogen engine vehicles;

(ii) staff such repair facility with one repair technician who will have all required licenses, certificates and training under any applicable laws and will perform vehicle maintenance and repairs on all vehicle systems as directed in the hydrogen engine vehicle technician service manual delivered to Recipient contemporaneously with the delivery of the Vehicles, and one technical assistant who will also have all required licenses, certificates and training under applicable laws. Recipient shall ensure both the technician and the technical assistant are available (including personnel and travel expenses) for any training that may be conducted by Ford, as noted in Exhibit 4, attached hereto and incorporated herein by reference;

(iii) equip such repair facility with all necessary tools and equipment, including, but not limited to, a vehicle hoist, 120 volt outlets, shop air, workbenches and a standard set of technician hand repair tools, that are reasonably necessary to repair such Vehicles;



(iv) purchase special purpose tools required to diagnose and repair the Vehicles as detailed in Exhibit 3, attached hereto and incorporated herein by reference. These tools will be owned by the Recipient.;

(v) and provide for mobile fueling the vehicle to support service needs.

(b) Recipient shall pay for all normal (i.e. not related to the hydrogen system) vehicle maintenance and upkeep as defined by the applicable Ford standard limited warranty, and for all washing, parking, garage, tolls, and fines required or incurred in connection with Recipient's use and operation of the Vehicles. Recipient shall pay for all repairs necessitated by misuse or abuse of the Vehicles or by any accident or collision involving the Vehicles, while in the possession or under the control or direction of Recipient under this Agreement, except where such accident or collision is caused by defects in the Vehicles design, materials or workmanship. If the repair cost of a Vehicle is in excess of the insurance coverage provided for such repairs under Subsection 7(a)(iv) of this Agreement, upon agreement in writing from Ford, Recipient may elect to withdraw the Vehicle from use with no adverse effect to Recipient or Ford under this Agreement.

(c) All hydrogen system-related vehicle maintenance and repairs will be performed under the direction of Ford or its designee, and title to all such repairs shall vest in Ford. Ford will provide training to the Recipient at no cost regarding the Vehicle's hydrogen system, including diagnostics and repair.

## **9. Technical Support.**

Ford agrees to provide and pay for technical support for the Vehicles, specific to the hydrogen system, over the term of this Agreement, commencing on the date Recipient receives the first Vehicle. The hydrogen system includes engine, fuel storage, fuel delivery, fuel monitoring and related control systems. "Technical support" means (i) training of Recipient's fleet service personnel to maintain and service the Vehicles as described in Subparagraph 8(a) and Exhibit 4, attached hereto and incorporated herein by reference, (ii) providing Vehicle maintenance provisions via web-based vehicle service manuals, and (iii) providing engineering support via telephone. If a problem cannot be resolved in a reasonably timely manner through telephone consultation, Ford agrees to provide the required field engineering support. Ford will pay for replacement parts specific to the hydrogen system..

## **10. No Other Warranties.**

Paragraphs 8 and 9 set forth the exclusive warranties and obligations of Ford, and the sole warranty remedies of Recipient, with respect to service or repair of the Vehicles as a result of defects in such Vehicles. The parties agree that the implied warranties of MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE and all other

warranties, express or implied, are EXCLUDED from this Agreement and shall not apply to the Vehicles provided hereunder.

**11. Inspection and Report.**

(a) Recipient agrees to allow Ford to inspect the Vehicles at any time and to otherwise observe the Vehicles in operation at such times and at the facility of Recipient as Ford may reasonably specify. Recipient shall provide Ford with such mileage, maintenance, safety, operating, or other information or copies of any such records maintained by Recipient with respect to the Vehicles as Ford or any governmental agency may require.

(b) Recipient shall provide Ford with such evaluation reports and usage information on the Vehicles as required by Ford; but in any event not less than the information requested in Exhibit 5, attached hereto and incorporated herein by reference, which exhibit may be modified from time to time at the sole discretion of Ford.

(c) At intervals specified by Ford, Recipient shall download data from on-vehicle recording devices to a secure wireless portable computer system specified by Ford. Recipient shall forward the downloaded data as soon as possible to a secure Internet server. Ford will provide the secure wireless portable computer system. specified by Ford, and shall maintain confidentiality of such data at all times. Ford or a Ford authorized party shall supply the necessary software and server access information for this purpose to Recipient. Certain data shall be used for vehicle diagnostics and may be made available, at Ford's sole discretion, to Recipient's fleet maintenance and repair personnel.

(d) Each Vehicle has an automatic data transmitting system using cellular or satellite communication links to send limited real-time data such as vehicle position, speed, fuel level and other parameters of interest to a secure Internet server operated for Ford. The vehicle portion of the system includes antennas, modems, a global positioning satellite (GPS) unit, and a microprocessor. Recipient shall not disable, modify or interfere with this system in any way.

(e) At its option, Ford may elect to permit Recipient access, in real-time, to a subset of the server data referred to in Subparagraph 11(d) above for use in public displays or monitoring by Recipient's fleet managers. Types of data available in the subset shall be determined solely by Ford and Ford or a Ford authorized party shall supply the necessary software and server access information for this purpose to Recipient. Ford shall not be held responsible if the data are temporarily unavailable for any reason.

(f) Features of the Vehicle are described in Exhibit 6, E450 H2ICE Vehicle Description.

**12. Risk of Loss.**

Recipient shall assume all risks of loss with respect to each Vehicle from the time it is delivered by Ford to Recipient at the location designated in Subparagraph 3(a), until the Vehicle has been returned to Ford at the nearest service center designated by Ford or at such other location as mutually agreed between Ford and Recipient. Recipient shall be responsible for any and all damage to the Vehicles, whether caused by accident or otherwise, excepting only normal wear and tear and damage caused solely by defects in the Vehicles' design, materials or workmanship; provided, however, the foregoing provisions of this Paragraph 12 shall not apply to damage incurred during any period when such Vehicle is in the possession or under the control of Ford pursuant to the terms and conditions of this Agreement. In the event of damage to any Vehicle, Recipient shall notify Ford to that effect and follow such instructions as Ford may provide with respect to repair or other disposition of such Vehicle. If any Vehicle is lost, stolen, destroyed or declared a total constructive loss (subject to Ford's agreement to such condition), Recipient shall promptly notify Ford thereof and hold any wreckage for disposition by Ford. With respect to any lost, stolen or destroyed Vehicle, Recipient shall pay Ford \$125,000, except to the extent that such loss is covered by a third party Vehicle borrower's insurance inuring to the benefit of Ford. Nothing herein shall limit Ford's right to recover for damage to or loss of the Vehicles under a third party Vehicle borrower's insurance inuring to the benefit of Ford.

**13. Procedures on Accidents.**

An oral report of any accident, theft or conversion of any Vehicle should be made as soon as possible by Recipient to Ford. Within twenty-four (24) hours of an accident, theft or conversion of any Vehicle, Recipient shall file a written report to that effect with Ford and the insurer of such Vehicle. Recipient shall promptly notify and furnish Ford with every demand, notice, summons, process and pleading received in every suit, action or claim arising with respect to the condition, use or operation of the Vehicles, and cooperate with Ford and any insurer in defending the same. Ford reserves the right, upon reasonable prior notice to Recipient and during normal business hours, to examine any such Vehicle.

**14. Termination; Survival.**

(a) Either party may terminate this Agreement at any time for any reason whatsoever (even no reason) by giving fourteen (14) days prior written notice to the other party and, upon such termination, Recipient shall return the Vehicle(s) to Ford as soon as reasonably practicable to the nearest service center designated by Ford, or any other place as the parties may agree in writing. The party that elects to terminate the Agreement shall bear the transportation costs associated with returning the Vehicle(s) to nearest service center.

(b) Ford may also terminate this Agreement effective immediately upon written notice to Recipient in the event any of the following occurs (i) Recipient fails to provide or maintain any insurance required hereunder, (ii) the filing of any petition by or against Recipient under any bankruptcy, reorganization or receivership law, (iii) Recipient makes or suffers any voluntary or involuntary assignments, or attachment, lien or levy is made of, or attached to, the Vehicles, or (iv) Recipient otherwise fails to adhere to the terms and conditions of this Agreement.

(c) Payments made by Recipient hereunder are deemed fully earned by Ford when received; provided, however, in the event Ford does not deliver all Vehicles to Recipient, and there is no termination by Ford for cause pursuant to Subparagraph 14(b) or a termination by Recipient without cause pursuant to Subparagraph 14(a), Ford shall refund to Recipient the Advance Payment under Subparagraph 2(d)(i) of this Agreement for each Vehicle not delivered to Recipient. Ford shall incur no other liability under this Agreement with respect to any such termination of this Agreement, an evaluation of a Vehicle, or any failure to deliver Vehicles.

(d) If Ford terminates the evaluation of any individual Vehicle, the evaluation of the remaining Vehicles shall continue in effect under the terms of this Agreement.

(e) The rights and obligations contained in Subparagraphs 3(b), 6(a), 7(d), 8(b)&(c) and 14(c), and Paragraphs 10, 13, 16, 18 and 23, pertaining to return of the Vehicles, tax and fees, indemnification, repairs to a Vehicle, termination refund, warranty limitation, risk of loss, intellectual property and confidentiality, consequential commercial damages, and alternate dispute resolution, respectively, shall survive termination of this Agreement.

#### **15. Assignment.**

Neither party shall assign this Agreement or delegate performance of any of its obligations hereunder without the prior written consent of the other party.

#### **16. Intellectual Property and Confidentiality.**

(a) License Grant to Ford. Recipient grants to Ford a global, fully-paid, perpetual, unrestricted, nonexclusive and royalty free license, with the right to sublicense, to practice or have practiced any invention, copyright, industrial design or other proprietary right developed as a result of this Agreement.

(b) Confidentiality and Use.

(i) Recipient shall not disclose or publish to any third party any confidential or proprietary information, provided to Recipient by Ford or created by Recipient in the development, testing or evaluation of the Vehicles, which relates to the design, manufacture, evaluation, operation or performance of the Vehicles provided hereunder ("Confidential Information").

(ii) Recipient shall exercise reasonable care to maintain the confidentiality of all Confidential Information, including all data collected regarding, directly or indirectly, the Vehicles, for a period of five (5) years after the expiration or termination of this Agreement. The reasonable care to be undertaken by Recipient shall be at least that degree of care which Recipient normally uses to prevent the disclosure or publication of its own confidential or proprietary materials of a like nature, but shall in any event be a reasonable standard of care. Any proposed publications related to this vehicle program shall be submitted to Ford for its prior written approval.

(iii) During the term of this Agreement and thereafter, Recipient shall not use the Confidential Information other than in the course of its evaluations hereunder. Recipient shall return all such Confidential Information, or at Ford's request, destroy all Confidential Information within a reasonable period of time after termination or expiration of this Agreement. Confidential Information shall remain the property of Ford at all times.

(iv) Recipient shall be relieved of the confidentiality obligation and use restriction of the above with respect to any Confidential Information which:

- (aa) at the time of disclosure is, or thereafter becomes, part of the public domain or available to the public through no fault of Recipient, or
- (bb) Recipient can show by written records was in its possession prior to receipt thereof from Ford, or
- (cc) is received by Recipient from a third party which has no obligation of secrecy with respect thereto to Ford, or
- (dd) Recipient can show by written records has been independently developed by Recipient without benefit of the Confidential Information, or
- (ee) is required to be disclosed by law or court order or other governmental action, but only to the extent so ordered or compelled by law, and provided that Recipient shall notify Ford so that Ford may attempt to obtain a protective order, or
- (ff) is disclosed by Recipient with Ford's prior written approval.

Disclosures which have been made or which may be made under this Agreement, which are specific, shall not be deemed to be within the foregoing exceptions merely because they are embraced by more general information in the public domain or in the prior possession of the receiving party.

(v) The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). All of the City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract is deemed to be public records.

(vi) Recipient acquires no intellectual property rights under this Agreement, except the limited right to make copies of Confidential Information as necessary for use in accordance with the terms and conditions of this Agreement. No license under any existing or future trademark of either party, by implication or otherwise, is granted to the other party under this Agreement. The parties agree that in the event of a breach of these confidentiality and limited use provisions by Recipient, Ford will suffer irreparable damages which cannot be fully remedied by monetary damages, and is entitled to seek injunctive relief against any such breach in any court of competent jurisdiction.

**17. Force Majeure.**

Neither party shall be liable for any failure in performing any provision hereof only to the extent that such failure is due to any cause beyond its control such as labor difficulty or strike, lack of availability of transportation services, flood, fire, lightning, unusually severe weather, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake or material availability, provided that each party promptly notifies the other in writing of the nature, cause, date of commencement and expected impact of the event and has exercised due diligence in proceeding to meet its obligations hereunder.

**18. No Consequential Commercial Damages.**

In no event shall either party be liable to the other for any consequential commercial damages, including loss of anticipated profits, inconvenience due to early termination or any theft, damage, loss, delay or failure of delivery or defect or failure of any Vehicle resulting from a party's performance or nonperformance of its obligations hereunder.

**19. Entire Agreement; Amendment.**

This Agreement, including the Exhibits attached hereto and made a part hereof, constitutes the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior agreements, commitments, representations and discussions between the parties pertaining to the subject matter of this Agreement. This Agreement may be amended, modified or supplemented only by a writing duly executed by Ford and Recipient.

**20. Nonwaiver.**

Failure by either party to enforce any term, provision or condition hereof, or to exercise any of its rights hereunder, shall not be construed as thereafter waiving such terms, provisions, conditions or rights and the same shall continue and remain in effect as if no such failure to enforce had occurred. No waiver shall be valid unless specifically stated in writing to the respective representative of the party. In no event shall any course of dealing, custom or usage of trade modify, alter or supplement any of the terms or provisions contained herein.

**21. Notices.**

All notices pertaining to this Agreement shall be in writing and shall either be personally delivered, given by facsimile transmission (and confirmed by mail), or sent by registered or certified mail (airmail if mailed to or from a location outside the U.S.) postage prepaid, return receipt requested, to the representative of Ford or Recipient, as appropriate, at their respective addresses appearing as follows:

To Ford: Ford Motor Company  
Attn.: John Lapetz  
Manager, H2ICE Shuttle Bus Program  
2101 Village Road.  
Dearborn, Michigan 48124

With copy to: Ford Motor Company  
Attn: Secretary  
One American Road  
Dearborn, Michigan 48121

And to Ford Motor Company  
Attn: Melissa Hendra  
Manager, Government Business Administration

330 Town Center Drive – Suite 800  
Dearborn, Michigan 48126

To Recipient: Purchasing and Contracts Manager  
Purchasing and Contracts Division  
City Hall/First Floor  
400 Stewart Ave.  
Las Vegas, Nevada 89101

Notices given hereunder shall be deemed given on the date upon which notices were personally delivered or, if mailed, five (5) days after mailing.

**22. Governing Law; Venue.**

(a) This Agreement shall be construed and interpreted under the laws applicable in the State of Michigan, without regard to the choice of law provisions thereof. Each party irrevocably attorns to the non-exclusive jurisdiction of the courts of the State of Michigan.

(b) In the event that the Alternative Dispute Resolution procedures set forth in Section 23 are inapplicable or ineffective in resolving a dispute between the parties, any claims arising out of or ancillary to this Agreement shall proceed in an appropriate court in the Counties of Macomb, Monroe, Oakland, Washtenaw, or Wayne, Michigan or in the United States District Court for the Eastern District of Michigan. Recipient hereby consents to the jurisdiction of such courts and hereby waives any jurisdictional or venue defenses that may otherwise be available to it.

**23. Alternate Dispute Resolution.**

(a) If a dispute arises between the parties relating to this Agreement, the following procedure shall be implemented before any party pursues other available remedies, except that each party may seek injunctive relief from a court where appropriate in order to maintain the status quo while this procedure is being followed.

(b) The parties shall hold a meeting promptly, attended by persons with decision making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties hereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled hereunder, and further provided that all such statements made at such meeting shall be strictly off the record and shall not be admissible in any court or arbitration proceeding. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the



dispute to mediation in accordance with the then current rules of the CPR Institute for Dispute Resolution and to bear equally the costs of the mediation. Said cost shall be deemed to include the reasonable travel and living costs for two individuals from each party to participate in the dispute resolution process.

(c) The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the CPR Institute for Dispute Resolution if they have been unable to agree upon such appointment within twenty (20) days from the conclusion of the negotiation period.

(d) The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days. If the parties are not successful in resolving the dispute through the mediation, then the parties agree to submit the matter to binding arbitration or a private adjudicator, or either party may seek an adjudicated resolution through the appropriate court.

(e) Mediation or arbitration shall take place in Dearborn, Michigan unless otherwise agreed by the parties. The substantive and procedural law of the State of Michigan shall apply to the proceedings. Equitable remedies shall be available in any arbitration. Punitive damages shall not be awarded. This section is subject to the Federal Arbitration Act, 9. U.S.C.A. §1 et seq.

#### **24. Audit of Records**

(a) Ford agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with standard accounting principles and procedures and to retain all records and supporting documentation applicable to this Agreement for a period of three (3) years after completion of this Agreement and any subsequent extensions thereof. All records subject to audit findings shall be retained for three (3) years after such findings have been resolved. In the event Ford goes out of existence, Ford shall turn over to the Recipient all of its records relating to this Agreement to be retained by the Recipient for the required period of time.

(b) Ford agrees to permit the Recipient or the Recipient's designated representative(s) to inspect and audit its records and books relative to this Agreement at any time during normal business hours and given 48 hours notice and under reasonable circumstances and to copy and/or transcribe any Recipient Agreement related information that the Recipient desires concerning Company's operation hereunder. Ford further understands and agrees that said inspection and audit would be exercised upon written notice. If Ford or its records and books are not located within Clark County, Nevada, and in the event of an inspection and audit, Company agrees to deliver the records and books or have the records and books delivered to the Recipient or the Recipient's designated representative(s) at an address within the Recipient of Las Vegas as designated by the Recipient. If the Recipient or the Recipient's designated representative(s) find that the records and books delivered by Ford are incomplete, Ford agrees to allow the Recipient

or the Recipient's designated representatives inspect, audit, retrieve, copy and/or transcribe the complete records and books at Ford's offices, but Ford will not incur related travel expenses. Ford further agrees to permit the Recipient or the Recipient's designated representatives to inspect and audit, as deemed necessary, all records of this project relating to finances, as well as other records including performance records that may be required by relevant directives of funding sources of the Recipient.

(c) The audit right conveyed under this Paragraph to the Recipient shall extend to the Department of Energy, the Comptroller General of the United States, or any of their duly authorized representatives.

## **25. Additional Government Requirements**

Ford shall carry out its activities in compliance with all applicable Federal, State, and Local codes, regulations, statutes, ordinances and laws.

(a) Ford shall comply with Executive Order (E.O.) 11246 "Equal Employment Opportunity," as amended by E.O. 11375 "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(b) Ford shall maintain current certifications as codified by 10 CFR Part 601 "New Restrictions on Lobbying" and 10 CFR Part 1036 "Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants)". These regulations restrict subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(c) Freedom of Information Act. The Company recognizes that any documents it submits to the City or the Government under this Contract are subject to public disclosure under the Freedom of Information Act ("Act"), as amended, and the U.S. Department of Energy (DOE) Implementing Regulations (10 CFR 1004). The Act requires public access to information in DOE's possession, unless that information is protected under an exemption to the Act and does not require the Company to permit public access to their records. An exemption to the Act protects confidential or proprietary, commercial information, personnel information, financial information and trade secrets submitted by the Company provided that such information has not previously been made to the public. Prior to responding to a request for the Company's information in the possession of DOE, DOE will obtain the Company's opinions on whether the information should be exempted.

(d) Intellectual Property Provisions. The following regulations are hereby incorporated and form part of this Contract as an Attachment \_\_\_\_\_.

- (i) 10 CFR 600.325 Appendix A Rights in Data –  
Programs Covered Under Special Data (OCT 2003)
- (ii) 10 CFR 600.325 Appendix A Patent Rights (Large  
Business Firms – No Waiver) \*
- (iii) FAR 52.227-23 Rights to Proposal Data (Technical) JUN 1987)

Note – In reading these provisions, any reference to “contractor” shall mean “recipient” and any reference to “contract” or “subcontract” shall mean “award” or “subaward”.

\* If a waiver of patent rights is granted, than provisions approved by the DOE patent counsel, in accordance with 10 CRF 784, will be substituted for this Patent Rights provision.

(e) National Environmental Policy Act (NEPA) Requirements. Ford is restricted from taking any action using Federal funds, which would have an adverse affect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project.

(f) Ford shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

(g) Lobbying Restrictions. By accepting funds through this Agreement, Ford agrees that none of the funds shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(h) Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress. It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement be American-made.

**IN WITNESS THEREOF**, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date first above written.

**FORD MOTOR COMPANY**

Approved to Form:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attest:

Title: \_\_\_\_\_

\_\_\_\_\_  
BARBARA JO RONEMUS, City Clerk

**RECIPIENT**

By: \_\_\_\_\_

Name: KATHLEEN C. RAINEY

Title: Purchasing and Contracts Manager  
City of Las Vegas

**EXHIBIT 1****Vehicle Identification**

The following information provides identification of the Ford H2ICE Vehicles provided to the Authority:

Unit No.	Vehicle Identification No.	State License No.	Mileage @ Delivery	Date In Service	Date out of Service
1					
2					

Initials \_\_\_\_/\_\_\_\_  
Date \_\_\_\_/\_\_\_\_

**EXHIBIT 2**

**VEHICLE USAGE PLAN**

Summary: the two (2) shuttle buses will be utilized in the City's Downtown corridor primarily serving the senior community and patrons/ tourists to the Outlet Mall. This affords very high visibility to a diverse constituency. It is anticipated that the buses will be utilized between 3-5 days per week depending upon passenger demand. It is also envisioned, that these buses will be used in parades and special Mayor/Council and City manager events such as Grand Openings for new buildings and parks.

**Service Contact Information:**

Ford Motor Company:  
Mathew Fast  
Research and Innovation Center  
MD 3619, Room 3619  
2101 Village Road  
Dearborn, MI 48124  
Telephone - 313-248-9454, Fax – 313-248-9454  
e-mail: [mfast@ford.com](mailto:mfast@ford.com)

Las Vegas :  
Dan Hyde, Fleet & Transportation Services Manager –  
2950 Ronemus Dr.  
Las Vegas, NV 89128  
Voice (702) 229-6971  
Cell (702) 378-2792  
Fax (702) 464-5735

Initials \_\_\_\_\_ / \_\_\_\_\_  
Date \_\_\_\_\_ / \_\_\_\_\_

**EXHIBIT 3**

**SPECIAL TOOLS LIST**  
**This list is being developed.**

Items	Unit Cost (\$US) estimate	Qty	Total Cost	Items	Unit Cost	Qty	Total Cost
<b>Fuel</b>							
Leak Detector							
a. 3000is	\$4,500						
b. TIF	\$300						
Calcheck	\$2,000						
Fuel Diagnostic Tool	\$4,000						
Stack kit & instructions	\$2600						
Purge manifold assembly	\$2600						
<b>Telematics</b>							
a. Display Device (IDS)	\$700						
b. Flash Drive 1 Gigabyte	\$100						
c. Connectors & Adapters	\$200						
<b>TOTAL (estimate)</b>	<b>\$17,000</b>						

Redacted text block containing illegible information, likely a signature or stamp.

**EXHIBIT 4****TRAINING OF PERSONNEL**

<b>Personnel</b>	<b>Drivers Training</b>	<b>Fueling Training</b>	<b>Fleet Mgr. Training</b>	<b>Maintenance Training</b>	<b>Technician Training</b>
	2 Hr "instructor led" classroom training with vehicle review & short parking lot drive	1 Hr "instructor led" training at the fueling station	Includes "Drivers" & "Fueling" training plus (2) Hr. vehicle maint. Req'ts.	Includes "Drivers" & "Fueling" training plus (1) day vehicle maintenance procedures	2-3 Day "instructor led" training held at various FCSD Training Centers.
Vehicle Drivers	X	Optional			
Fleet Operations Personnel	X	X	X	Optional	
Fleet Maintenance Personnel	X	X	X	X	
Vehicle Repair Technicians					X



**EXHIBIT 5****H2ICE DATA GATHERING AND REPORTING SUMMARY**

In order to monitor real-world performance and efficiently service the Recipient's H2ICE fleet, Ford will acquire, summarize, and perform diagnostic analysis on data from each vehicle. All data will be treated by Ford as confidential.

**Data Sources:**

- Vehicle data sent by real-time telematics during vehicle operation.
- Vehicle data downloaded manually or automatically via WiFi or similar wireless connection at the Recipient's after-hours vehicle parking locations or at the vehicle service facility.
- Data recorded by Recipient and reported to Ford.

**Number of Samples, Reporting Frequency:**

- Vehicle telematics data will be transmitted automatically.
- Wireless retrieval of vehicle data after hours is intended to be automatic, but the Recipient may from time to time be required to perform this operation manually at Ford's request using tools supplied by Ford.
- Recipient shall keep records of scheduled and unscheduled maintenance, repairs, Ford requested modifications, Ford requested or Recipient initiated diagnostic tests, and driver comments and transmit same to Ford Motor Company on a quarterly basis.

**Parameters to be Recorded:**

- Vehicle telematics data will consist of variables such as vertical and horizontal vehicle position, speed, engine RPM and load, fuel level, diagnostic codes and other engineering quantities of interest to Ford.
- Wireless vehicle data retrieved after hours will consist of selected transient data records triggered by predefined events and acquired and stored during vehicle operation.
- Recipient's maintenance data shall include:
  - Log of fluids added
  - Samples of fluids and removed filter elements if requested by Ford
  - Visual inspections/pictures of specified components (e.g. oil separator, etc)
  - Engine or other control/communication module diagnostic test results
  - Driver comments on vehicle performance
  - Records of defueling or purging events (necessary to bring vehicles into non-hydrogen rated facilities or purge hydrogen from the fuel system)

**Telematics Data Website:**

- Ford engineers may view vehicle telematics data at any time for the purpose of monitoring, analysis or diagnostics.
- Although Ford engineers may use the website to query the vehicle for specific limited data while the vehicle is in operation, no part of the vehicle's performance is controllable from the website.

**Data Accuracy and Availability:**

- Although Ford will make every reasonable effort to maintain and validate the accuracy of the data acquired, events beyond Ford's control (e.g. sensor, communications or data server failure) may lead to erroneous data reports, missing data or temporarily unavailable data.

**EXHIBIT 6****E450 H2ICE VEHICLE DESCRIPTION**

1. Vehicle description	E450 Cutaway Shuttle Bus
2. Configuration:	Shuttle Bus (Body manufactured By Corbeil Enterprises)
3. Wheelbase	176" WB
4. Body style	Shuttle Bus Body on E450 Chassis
5. Passenger capacity	12 passengers or 8 passengers with chair lift
6. Chair lift capacity	Yes
7. Vehicle length	301.5 "
8. Vehicle width	96"
9. Vehicle height	112.5"
10. Frontal overhang	30"
11. Rear overhang	95.5"
12. Fueling location	Left rear side
13. Power steering	Yes
14. Engine displacement	6.8L V10 Engine , Supercharged
15. Engine horsepower	225 HP
16. Engine torque	340 ft.-lbs.
17. Transmission	Automatic, 5R110W
18. Final drive ratio	4.56:1
19. GVW	14,050 lbs./ 6375 kg
20. Emission level	0.2 gm / BHP-hr NOx (target)
21. OBD compliant	Partially compliant
22. Warranty	Vehicle will remain property of the Ford Motor Company
23. Fuel system	5000 psi storage
24. Fuel capacity	30 kg of gaseous hydrogen (1)
25. Vehicle range	150 miles
26. Tank configuration	Rear of vehicle, separate from passenger area, above frame
27. Fuel tanks	Dynetek W205 Type 3, (carbon fiber wrapped, metal liner)
28. A/C	Yes
29. H2 logos/signage	Signage / Color to be determined by customer and Ford
30. Interior seating configuration	To be determined by Customer and Ford

(1) The fuel storage volume of the Ford E450 H2ICE vehicle is 30 kg (1,230 liters (water capacity)), which is indicated to appropriately equipped fill stations by an 11.1 kOhm resistor in the vehicle's fill data communication circuits. The vehicle user may experience slow and/or incomplete fills if the station is not able to recognize this.

Attachment A

---- ATTACH THE FAX FROM THE CITY OF LAS VEGAS DATED MAY 24, 2006  
(Referenced in section 7( c ). ----